In the High Court of Judicature for Rajasthan
Jaipur Bench

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Cr. Msc. Petition No.2150/2007
Fareed Khan ***Versus*** State

Date of Order ::: 06/12/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. Ali Mohd. Khan, for petitioner
Mr. Arun Sharma, Public Prosecutor

Instant petition U/s 482, CrPC has been filed assailing order dt.14/09/07 in Cr.Misc. Case No.461/07 passed by Special Judge, (NDPS Cases) Baran who rejected application U/s 457, CrPC for releasing motorbike (RJ-28-3M-3448) on superdginama seized during investigation in FIR -282/2007 PS Kotwali (Baran).

FIR-282/07 was lodged at PS Kotwali (Baran) for offence U/s 8/18 of NDPS Act. Pendente investigation motorbike (RJ-28-3M-3448) seized by investigating agency.

Petitioner filed an application for release of aforesaid vehicle on superdginama U/s 457, CrPC. Learned trial Judge after taking note of material on record, rejected the application on the premise that this vehicle has been used in commission of alleged offence and it would not be proper to release the vehicle keeping in view nature of offence where there is

possibility that if vehicle is released and handed over, it may be used again for the said purpose. In support, Counsel placed reliance upon decisions in **Hariram Vs. State (2002(2) Rcr.C.714) & Vijay Kumar Vs. State (2001(1) Rcr.C 384)**, and submits that even in cases where the vehicle used for commission of offence under NDPS Act & seized during investigation, was released by this Court on superdgi with an additional condition to furnish an undertaking that the vehicle released will not be used for anti-social activities pendente trial.

Counsel submits that petitioner is registered owner of motor bike in question and no body except him has come forward for release thereof on superdgi and in case the vehicle is not released in his favour, and it may remain in police custody duly seized but unattended rather resulting into a scrape having no use for him in future. Counsel further submits that petitioner is ready to abide by conditions which this Court may deem proper to impose for release of the vehicle.

This Court has heard learned counsel for petitioner and Public Prosecutor and considered their contention, as also material on record. It is a common experience that

whenever a vehicle is seized and kept at police station, its conditions deteriorates day by day, and one day it becomes a scrap even before trial of the case is concluded and thereby it not only becomes individual loss but also a national loss because if the vehicle is on its wheels then it is used for transportation and earns revenue to the State also and therefore, as far as practicable, vehicle should not be permitted to be ruined at police station, as has been held by this Court in ***Chanduram Vs. State (1994(2)RLR 507) and Deewan Singh Vs. State (1987(2) RLR 798).*** Release of the motor bike was declined by court below on sole ground that it is one of material evidence and if released might be used for commission offence alleged further. It is not in dispute that the motor bike is lying in custody of SHO PS concerned in an open place and chances of its being damaged on account of its exposure to natural effects like sun & rain etc, which is imminent, rather it will diminish its value and also deprive the petitioner of his livelihood. In the opinion of this Court,order of the trial Judge is not legally sustainable.

Consequently, this petition is allowed. Orders dt.14/09/07 of the Special Judge (NDPS Cases), Baran is hereby set aside. Taking into

consideration all the facts & circumstances of the case motorbike (RJ-28-3M-3448) seized during investigation in FIR -282/2007 PS Kotwali (Baran) for offences U/S 8/18 of NDPS Act, be released on superdginama and delivered to the petitioner during pendency of investigation, inquiry & trial on production of registration certificate & insurance policy on his satisfying following conditions:

(1)petitioner shall furnish personal bond in a sum of Rs.75,000/-(Seventy five thousand only) with one surety in the like amount to the satisfaction of the trial Court with the stipulation to produce the vehicle before the trial Court or competent authority during inquiry, investigation and trial as & when ordered/required.

(2)that in the presence of investigating officer, he shall get three coloured cabinet size photographs of the vehicle in question each set showing - (a) number plates; (b) chesis number; (c) engine number; & (d) total body of the vehicle and produce photographs & its negatives alongwith challan before the trial Court.

(3) that he shall not change the colour or alter numbers or tamper with the evidence in any manner and shall not make or allow any changes in its to be made so as to make it unidentifiable;

(4)that without prior permission of the trial Court, he shall not transfer or alienate the said vehicle during pendency of the trial and

shall not lease it to any one;

(5)that he will not allow the vehicle in question to be used for any anti-social activities including for the purpose of carrying narcotics which may constitute offence under the NDPS Act.

(**Ajay Rastogi), J.**

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